

# UNITED STATES DISTRICT COURT

## District of Massachusetts

UNITED STATES OF AMERICA

V.

ROSS ELLIOTT

**JUDGMENT IN A CRIMINAL CASE**Case Number: **1: 04 CR 10378 - 001 - GAO**

USM Number: 25454-038

JOHN F. PALMER, ESQUIRE

Defendant's Attorney



Additional documents attached

Date of Original/Amended Judgment:

**THE DEFENDANT:**☒ pleaded guilty to count(s) 1 (Plea: 9/21/06)☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Additional Counts - See continuation page ☐

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC sec. 2252	(a)(4)(B) Possession of Child Pornography	12/22/03	1

The defendant is sentenced as provided in pages 2 through \_\_\_\_\_ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

01/16/07

Date of Imposition of Judgment

/s/ George A. O'Toole, Jr

Signature of Judge

The Honorable George A. O'Toole  
Judge, U.S. District Court

Name and Title of Judge

January 17, 2007

Date

DEFENDANT: **ROSS ELLIOTT**

CASE NUMBER: **1: 04 CR 10378 - 001 - GAO**

**ADDITIONAL COUNTS OF CONVICTION**

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
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DEFENDANT: **ROSS ELLIOTT**  
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### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 24 month(s)  
on count 1.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends to the Bureau of Prisons that the defendant participate in mental health treatment which includes as a component sex offender counseling, if available at designated facility.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 02/16/07 .

☒ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

Judgment—Page 3 of       DEFENDANT: **ROSS ELLIOTT**CASE NUMBER: **1: 04 CR 10378 - 001 - GAO****SUPERVISED RELEASE**☐ See continuation page

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 2 year(s)  
on count 1.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 tests per year, as directed by the probation officer.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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**ADDITIONAL ☒ SUPERVISED RELEASE ☐ PROBATION TERMS**

The defendant is to participate in a mental health treatment program as directed by Probation. The defendant shall be required to contribute to the costs of services for such treatment based on the ability to pay or availability of third-party payment.

The defendant is to participate in a sex offender specific treatment program which may include sex offender specific testing at the direction of the Probation Office. The defendant shall be required to contribute to the costs of services for such treatment based on the ability to pay or availability of third-party payment.

The defendant shall be required to submit to periodic polygraph testing as a means to insure that he is in compliance with the requirements of his therapeutic program. No violation proceedings will arise based solely on a defendant's failure to "pass" the polygraph. Such an event could, however, generate a separate investigation. When submitting to a polygraph exam, the defendant does not waive his Fifth Amendment rights, and the defendant's exercise of his Fifth amendment rights will not give rise to violation proceedings. The defendant shall be required to contribute to the costs of testing based on the ability to pay or availability of third-party payment.

**Continuation of Conditions of ☒ Supervised Release ☐ Probation**

The defendant is prohibited from possessing a computer and/or related materials except as deemed necessary for work purposes.

The defendant shall report his address, and any subsequent address changes, to the Probation Office.

The defendant shall register as a sex offender as required in any state where he resides, is employed, carries on a vocation, or is a student.

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### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ <u>          \$100.00          </u>	\$ <u>                                  </u>	\$ <u>                                  </u>

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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☐ See Continuation  
Page

<b>TOTALS</b>	\$ <u>                                  \$0.00          </u>	\$ <u>                                  \$0.00          </u>
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☐ Restitution amount ordered pursuant to plea agreement \$                                   

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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DISTRICT: **MASSACHUSETTS**

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## STATEMENT OF REASONS

### I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A ☐ The court adopts the presentence investigation report without change.
- B ☒ The court adopts the presentence investigation report with the following changes.  
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)  
(Use Section VIII if necessary.)
- 1 ☒ **Chapter Two of the U.S.S.G. Manual** determinations by court (including changes to base offense level, or specific offense characteristics):  
At the govt's concession, the adjustments to offense level proposed in paragraphs 25 & 27 are not made.
- 2 ☐ **Chapter Three of the U.S.S.G. Manual** determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):
- 3 ☐ **Chapter Four of the U.S.S.G. Manual** determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):
- 4 ☐ **Additional Comments or Findings** (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):
- C ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

### II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

- A ☐ No count of conviction carries a mandatory minimum sentence.
- B ☐ Mandatory minimum sentence imposed.
- C ☐ One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on
- ☐ findings of fact in this case
  - ☐ substantial assistance (18 U.S.C. § 3553(e))
  - ☐ the statutory safety valve (18 U.S.C. § 3553(f))

### III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 18  
Criminal History Category: I  
Imprisonment Range: 27 to 33 months  
Supervised Release Range: 2 to 3 years  
Fine Range: \$ 6,000 to \$ 60,000  
☒ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: **ROSS ELLIOTT**CASE NUMBER: **1: 04 CR 10378 - 001 - GAO**DISTRICT: **MASSACHUSETTS****STATEMENT OF REASONS****IV ADVISORY GUIDELINE SENTENCING DETERMINATION** (Check only one.)

- A ☐ The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.
- B ☐ The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons.  
(Use Section VIII if necessary.)
- C ☐ The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual.  
(Also complete Section V.)
- D ☒ The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

**V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES** (If applicable.)**A The sentence imposed departs** (Check only one.):

- ☐ below the advisory guideline range
- ☐ above the advisory guideline range

**B Departure based on** (Check all that apply.):**1 Plea Agreement** (Check all that apply and check reason(s) below.):

- ☐ 5K1.1 plea agreement based on the defendant's substantial assistance
- ☐ 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program
- ☐ binding plea agreement for departure accepted by the court
- ☐ plea agreement for departure, which the court finds to be reasonable
- ☐ plea agreement that states that the government will not oppose a defense departure motion.

**2 Motion Not Addressed in a Plea Agreement** (Check all that apply and check reason(s) below.):

- ☐ 5K1.1 government motion based on the defendant's substantial assistance
- ☐ 5K3.1 government motion based on Early Disposition or "Fast-track" program
- ☐ government motion for departure
- ☐ defense motion for departure to which the government did not object
- ☐ defense motion for departure to which the government objected

**3 Other**

- ☐ Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

**C Reason(s) for Departure** (Check all that apply other than 5K1.1 or 5K3.1.)

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy                         | <input type="checkbox"/> 5K2.1 Death                             | <input type="checkbox"/> 5K2.11 Lesser Harm                             |
| <input type="checkbox"/> 5H1.1 Age   | <input type="checkbox"/> 5K2.2 Physical Injury                   | <input type="checkbox"/> 5K2.12 Coercion and Duress                     |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills                     | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury      | <input type="checkbox"/> 5K2.13 Diminished Capacity                     |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition                      | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint   | <input type="checkbox"/> 5K2.14 Public Welfare                          |
| <input type="checkbox"/> 5H1.4 Physical Condition                                  | <input type="checkbox"/> 5K2.5 Property Damage or Loss           | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense         |
| <input type="checkbox"/> 5H1.5 Employment Record                                   | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon        | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon     |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities                    | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang                     |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service,<br>Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct                   | <input type="checkbox"/> 5K2.20 Aberrant Behavior                       |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating Circumstances             | <input type="checkbox"/> 5K2.9 Criminal Purpose                  | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct         |
|  | <input type="checkbox"/> 5K2.10 Victim's Conduct                 | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders          |
|  |  | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment        |
|  |  | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

**D Explain the facts justifying the departure.** (Use Section VIII if necessary.)



DEFENDANT: **ROSS ELLIOTT**  
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DISTRICT: **MASSACHUSETTS**

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## STATEMENT OF REASONS

### VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM

(Check all that apply.)

**A The sentence imposed is** (Check only one.):

- ☒ below the advisory guideline range  
☐ above the advisory guideline range

**B Sentence imposed pursuant to** (Check all that apply.):

**1 Plea Agreement** (Check all that apply and check reason(s) below.):

- ☐ binding plea agreement for a sentence outside the advisory guideline system accepted by the court  
☐ plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable  
☐ plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

**2 Motion Not Addressed in a Plea Agreement** (Check all that apply and check reason(s) below.):

- ☐ government motion for a sentence outside of the advisory guideline system  
☐ defense motion for a sentence outside of the advisory guideline system to which the government did not object  
☐ defense motion for a sentence outside of the advisory guideline system to which the government objected

**3 Other**

- ☒ Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s) below.):

**C Reason(s) for Sentence Outside the Advisory Guideline System** (Check all that apply.)

- ☒ the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)  
☒ to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))  
☒ to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))  
☒ to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))  
☒ to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))  
☒ to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))  
☐ to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

**D Explain the facts justifying a sentence outside the advisory guideline system.** (Use Section VIII if necessary.)

The impact of the defendant's psychiatric disorder is taken into account. See further statement of reasons stated in open court. A transcript is attached.

DEFENDANT: **ROSS ELLIOTT**  
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DISTRICT: **MASSACHUSETTS**

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**STATEMENT OF REASONS****VII COURT DETERMINATIONS OF RESTITUTION**

- A ☐ Restitution Not Applicable.
- B Total Amount of Restitution: \_\_\_\_\_
- C Restitution not ordered (Check only one.):
- 1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
  - 2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
  - 3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
  - 4 ☐ Restitution is not ordered for other reasons. (Explain.)
- D ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

**VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE** (If applicable.)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant's Soc. Sec. No.: 000-00-8561Date of Imposition of Judgment  
01/16/07Defendant's Date of Birth: 00-00-1957/s/ George A. O'Toole, JrDefendant's Residence Address: 85 Merriam Street, Apt. 3  
Somerville, MA 02143Signature of Judge  
The Honorable George A. O'Toole Judge, U.S. District CourtDefendant's Mailing Address: same as aboveName and Title of Judge  
Date Signed January 17, 2007

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UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROSS ELLIOTT,

Defendant.

Criminal Action  
No. 03-10378-GAO

TRANSCRIPT OF STATEMENT OF REASONS

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

United States District Court  
John J. Moakley U.S. Courthouse  
1 Courthouse Way  
Boston, Massachusetts 02210  
January 16, 2007  
3:05 p.m.

\* \* \* \* \*

SHELLY M. KILLIAN, CM  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
1 Courthouse Way, Room 3510  
Boston, MA 02210  
(617) 737-7117

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APPEARANCES:

For the Plaintiff:

Christopher Bator  
United States Attorney's Office  
John Joseph Moakley Federal Courthouse  
1 Courthouse Way, Suite 9200

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Boston, Massachusetts 02210

For the Defendant:

John F. Palmer, Esq.  
Law Office of John F. Palmer, P.C.  
24 School Street, 8th Floor  
Boston, Massachusetts 02108

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# PROCEEDINGS

(The following proceedings were held in open court  
before the Honorable George A. O'Toole, Jr., United States  
District Judge, United States District Court, District of  
Massachusetts, at the John J. Moakley United States Courthouse,  
1 Courthouse Way, Boston, Massachusetts, on January 16, 2007.

The defendant, Richard Cassano, is present with  
counsel. Assistant United States Attorney Christopher Bator is  
present.)

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(Statement of Reasons begins.)

THE COURT: Okay.

As I've mentioned, there are a number of factors in the statute that require attention. We've given attention to the advice from the guidelines, which are two of the guidelines and relevant policy statements, which are two aspects of the guidelines. Let me address some of the others.

The nature and circumstances of the offense.

The -- I think the thing or some of the things that occur to me about the offense as it appears from the offense -- statement of offense conduct is, first, the relatively large number of images that were I guess, A, downloaded and, perhaps more important, saved. I think one thing that strikes me about the circumstances of this offense is the saving, preserving of the images both on CD and there's evidence or information in the record about printing off copies on paper copies and so on.

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The collection of images apparently spanned at least a couple of years, perhaps a little longer. And so there's a persistence and almost a kind of dedication to the research and saving the fruits of the research, which I think have to be taken account of.

The second factor is the history and characteristics of the defendant. Of course, as we've noted, there's no prior criminal history, which is a significant factor in his favor, nor is there any indication in the information presented of any other kind of anti-social behavior or activity by the defendant. He's had steady employment and stable family life and so on. All of those things count in his favor.

There is the question of what psychiatric or

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15 psychological disorders may be present. There's evidence not  
16 only of recent diagnosis but also remote past diagnosis, which  
17 raises the question of what role any such disorder might have  
18 played in the defendant's commission in the offense. And I'll  
19 come back to that in a minute.

20 The third factor enumerated in the statute asks  
21 that the Court consider the need for the sentence to reflect  
22 the seriousness of the offense, promote the respect for the  
23 law, provide just punishment, afford an adequate deterrence,  
24 protect the public from further crimes by the defendant, and  
25 provide the defendant with needed educational, vocational,

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1 medical or other correctional treatment. I don't think there  
2 can be any doubt, even if there might be disagreement, that  
3 the -- from the penalties that are prescribed and recommended,  
4 that both the Congress and the sentencing commission regard the  
5 offense of conviction as a very serious one and calls for a  
6 serious, substantial penalty including, usually,  
7 incarceration.

8 Under the guidelines, for example, even the offense  
9 at its simplest level, that is, the base offense -- if you took  
10 just the base offense level at 15 and acceptance of  
11 responsibility, an adjustment of two levels at that point down  
12 to 13. Under the sentencing grid, the penalty would still fall  
13 within Zone D with a recommended range of 12 to 18 months. So  
14 that's even the unenhanced level of the offense. So I think  
15 from that and from the whole structure of the penalties  
16 prescribed first by Congress and then responded to by the  
17 commission indicates that those bodies have, paying particular  
18 attention to the Congressional view, have indicated that a  
19 serious penalty is necessary in order to recognize the

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seriousness of the offense, provide just punishment for it, and promote respect for the law.

I think deterrence is also an important consideration in these offenses, in this offense. The penalty, of course, must be sufficient to deter this defendant from any return to similar offense conduct. I understand what

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Mr. Palmer said about the chastening effects of the fact of getting caught and pleading guilty. And those are not -- I don't minimize those. On the other hand, I think even where those things are present, it is not unreasonable to consider that a penalty has to be sufficient to deter future succumbing to the same kind of impulses, which can, we know from experience in these cases, can be quite strong and sometimes overpowering. And so that it does make sense to have a serious penalty to reinforce whatever internal resolution there is to remain -- or to avoid committing the offense again.

Deterrence of others I think is also a significant consideration. I'm not sure that imposing severe sentences on one offender has much effect in warning off other offenders. I am concerned in the other direction, that insufficiently punishing a given offender may encourage others or may signal that they may escape serious punishment.

Another factor in the statute is the kind of sentences available. And I recognize, as the defense has argued, that there's a wide range that's open on this occasion, including not only incarceration but home confinement, community confinement, and other combinations of penalty.

And the last factor I'll mention is the need to avoid unwarranted sentencing disparity among defendants with similar records who have been found guilty of similar conduct.

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25 This is related closely to the requirement of the statute that

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1 take account of what the recommendation is from the guidelines  
2 because the guidelines themselves operate imperfectly,  
3 admittedly, but with some effectiveness to try to do exactly  
4 what this factor calls for. And that is to try to routinize  
5 sentencing decisions to the point where unwarranted sentencing  
6 disparities can sought to be avoided. So taking seriously the  
7 guidelines helps to accomplish that.

8 Now, so I think it's fair to say, then, that I  
9 think a sentence of incarceration is appropriate. Exactly what  
10 level it should be, I think the government makes a reasonable  
11 recommendation. The one concern I have is whether there is a  
12 reason to depart downwardly within the guidelines regime, not  
13 as a variance from under the Booker theory, but within the  
14 regime of the guidelines under 5K2.13, diminished capacity,  
15 which permits a departure if a substantially reduced mental  
16 capacity contributed to the commission of the offense.

17 I think there is a real issue of psychiatric  
18 involvement here as identified by the report. I would like to  
19 have had more information about it. I'm not sure how -- it's a  
20 little speculative. But there is an interesting observation by  
21 Dr. Edersheim that makes this a little -- this case a little  
22 bit different from other cases of this sort, of this offense.  
23 And I'm quoting from a part of the report that I think is not  
24 included in the PSR. Dr. Edersheim says, "His descriptions of  
25 downloading images are more consistent with the gratification

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1 of obsessive and compulsive anxieties rather than primarily  
2 sexual ones. And he repeatedly denied the ability or the  
3 desire to achieve sexual gratification from these images."



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4 Now, she cautions that this is based solely on the interview  
5 and the report of the defendant, but it's also consistent with  
6 her other observations.

7 And I think that does distinguish the case a little  
8 bit from the usual case, if I can say that, under the  
9 guidelines. So I'm inclined to depart slightly to recognize  
10 that factor.

11 PROBATION OFFICER: Your Honor, I hate to interrupt  
12 but I just want to point out that 5K2. -- if you're going to do  
13 a guideline departure, 5K2.13 departure is specifically  
14 prohibited in this type of case, even in the old version of the  
15 guidelines.

16 THE COURT: Give me the reference. I thought I  
17 looked at that and concluded that that was not the case.

18 PROBATION OFFICER: 5K2.13 in the second paragraph  
19 where it says, "However the Court may not depart below the  
20 applicable guideline range," and the fourth one listed is if  
21 the defendant's been convicted of an offense and this offense  
22 is a chapter 110 offense.

23 THE COURT: I think you're right.

24 MR. PALMER: Well, I think the Court can still  
25 under the present regime impose what --

9

1 THE COURT: I can still do it as a variance. I  
2 think I could then. Right. I was going to stay within the  
3 guidelines, but I think I'll do that. The only other -- and  
4 this is not a significant one -- is really to recognize the  
5 factor but not to overplay it. So I'm going to depart from the  
6 low end of the guideline range only three months to 24 months.

7 Let me just as a final statement say I considered  
8 also the question, because I think it's raised by the

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9 defendant, of whether family ties and responsibilities and so  
10 on might be a reason for departing. Also under the guidelines  
11 not -- within the guidelines not permitted. And I'm not  
12 persuaded that this case is unusual in that respect. It is  
13 unfortunately a recurring consequence of criminal sentencing  
14 that there are innocent people in the family who suffer as a  
15 consequence of what needs to be done to justly punish an  
16 offender. So I would not be persuaded on that ground.

17 So, Mr. Elliott, if you'd stand, please.

18 Ross Elliott, on your conviction of this offense  
19 and pursuant to the Sentencing Reform Act of 1984, it is the  
20 judgment of the Court that you be and you hereby are committed  
21 to the custody of the Bureau of Prisons to be imprisoned for a  
22 term of 24 months. I will make a recommendation that you  
23 participate in mental health treatment, which includes as a  
24 component sex offender counseling if available at the  
25 designated Bureau of Prisons facilities where you are

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1 incarcerated.

2 Upon your release from imprisonment, you shall be  
3 placed on supervised release for a term of two years. Within  
4 72 hours of your release from custody, you shall report in  
5 person to the district to which you've been released. While  
6 you're on supervised release, you shall comply with all the  
7 standard conditions that pertain to that status that are set  
8 forth in the sentencing guidelines at Section 5D1.3(c).  
9 They're incorporated by reference and will be set forth in the  
10 written judgment.

11 In addition to those conditions, while you're on  
12 supervised release, you shall comply with the following special  
13 conditions: You shall not commit any other federal, state, or

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14 local crime; you shall not illegally possess a controlled  
15 substance. There's no evidence of any substance abuse or  
16 involvement with illegal drugs, so I'll suspend the usual drug  
17 testing conditions for this defendant. You shall submit to a  
18 collection of a DNA sample as directed by the probation  
19 office.

20 You are prohibited from possessing a firearm,  
21 destructive device or other dangerous weapon. If directed to  
22 do so by the probation office, you're to participate in a  
23 mental health treatment program; and you may be required to  
24 contribute to the cost of such program based on the ability to  
25 pay or availability of third-party payment. You are also, if

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1 directed to do so by the probation office, to participate in a  
2 sex offender specific treatment program and may also be  
3 required to contribute to the cost of such a program based on  
4 your ability to pay or the availability of third-party  
5 payment.

6 You shall be required to submit to periodic  
7 polygraph testing as a means to ensure that are in compliance  
8 with the requirement of your therapeutic program. No violation  
9 proceedings will arise based solely on your failure to pass a  
10 polygraph test, but such an event could generate a separate  
11 investigation. While you're submitting to a polygraph test,  
12 you do not waive your Fifth Amendment rights and your  
13 exercise -- any exercise of your Fifth Amendment rights will  
14 not give rise to any violation proceedings. Again, you may be  
15 required to contribute to the cost of any such testing based on  
16 your ability to pay or the availability of third-party payment.

17 You are prohibited from possessing a computer  
18 and/or related items or materials except as may be necessary

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19 for your employment. You shall report any address changes to  
20 the probation office promptly. If required to do so by the  
21 state law where you reside, you are required as a condition of  
22 your supervised release to register as a sex offender.  
23 Wherever state law requires it.

24 I will not impose a monetary fine. There is a  
25 mandatory special assessment in the sum of \$100, which is due

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1 forthwith.

2 Now, there was a request for self-report.

3 MR. BATOR: No objection, your Honor.

4 THE COURT: Okay, if there's no objection from the  
5 government. Four weeks.

6 THE CLERK: Friday, February 16th, by noon,  
7 12:00 p.m.

8 MR. BATOR: Your Honor, one question. Is defendant  
9 scheduled -- would he be scheduled during this period for any  
10 further mental health treatment during the -- before the time  
11 between now and the time he reports?

12 THE COURT: You mean by terms of already existing  
13 pretrial release?

14 MR. BATOR: Either by pretrial or based on his own  
15 private arrangements. It strikes me it may be useful simply  
16 that there be some contact between --

17 THE COURT: I don't have the pretrial conditions.  
18 Do you have a copy of the pretrial?

19 PROBATION OFFICER: I'll see if they're in the  
20 file.

21 MR. BATOR: I believe it's indicated as if deemed  
22 appropriate. I don't know if he had been currently receiving  
23 some treatment.

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24 THE COURT: Do you know, Mr. Palmer?

25 MR. PALMER: He's not presently receiving treatment

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1 but I did have -- well, a while ago I had conversations with  
2 pretrial services. They were recommending it but they never --  
3 they suggested that I try and get it so...

4 THE COURT: Well, I don't think it's worth  
5 initiating for the period of time between now and the report.  
6 I think it will simply be that the conditions that are in  
7 effect for pretrial release of course continue until he  
8 surrenders. The surrender will, of course, be at an  
9 institution as designated by the Bureau. It won't be here; it  
10 will be wherever he's designated.

11 MR. PALMER: Will he continue to be reporting to  
12 pretrial services?

13 THE COURT: Abide by all the conditions that he's  
14 been abiding by.

15 THE CLERK: Ross Elliott, you have a right to file  
16 a notice of appeal in this case. If you do wish to file an  
17 appeal, you must file it within ten days from the date the  
18 judgment is entered. If you cannot afford an attorney to file  
19 the appeal on your behalf, you may request the clerk of the  
20 Court to file the appeal for you and I will do so.

21 Do you understand, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. We'll be in recess.

24 (Recessed, 4:13 p.m.)

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